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IN THE

Supreme Court of the United States

NEIL RANDALL, *et al.*,

Petitioners,

v.

WILLIAM SORRELL, *et al.*,

Respondents.

VERMONT REPUBLICAN STATE COMMITTEE, *et al.*,

Petitioners,

v.

WILLIAM SORRELL, *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF *AMICI CURIAE* OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; THE FANNIE LOU HAMER PROJECT; THE EQUAL JUSTICE SOCIETY; AND THE GREENLINING INSTITUTE IN SUPPORT OF RESPONDENTS-CONDITIONAL CROSS PETITIONERS AND RESPONDENTS-INTERVENORS-CONDITIONAL CROSS PETITIONERS

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INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, the National Association for the Advancement of Colored People, the Fannie Lou Hamer Project, the Equal Justice Society, and the Greenlining Institute (a coalition of community-based organizations of color) respectfully submit this brief *amici curiae* in support of Respondents-Conditional Cross Petitioners and Respondents-Intervenors-Conditional Cross Petitioners.[1]

Amici are organizations dedicated to improving the quality of life and the full participation in the political system of African American, Native American, Asian American/Pacific Islander and Latino communities. *Amici* represent communities of color with the highest levels of poverty, environmental pollutants, infant mortality, and crime, as well as the lowest levels of employment, education and home ownership. *Amici* are confident that this situation can and will be changed when the electoral process gives them real access to political office, to elected officials, and to meaningful campaign participation.

SUMMARY OF ARGUMENT

Forty years ago, America celebrated the passage of the Voting Rights Act of 1965—a hard won promise of democratic inclusion and political equality for African Americans and other minority communities. Civil rights pioneers—many then members of organizations that today file this *amicus curiae* brief—devoted their lives to delivery

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[1] Pursuant to Supreme Court Rule 37.2(a), *Amici* filed this brief with the written consent of all parties. Pursuant to Rule 37.6, *Amici* confirm that no counsel for a party authored this brief in whole or in part and that no person other than *Amici* and their counsel made a monetary contribution to its preparation or submission.

of the franchise to members of our democratic society who had been effectively excluded from the political process. The Voting Rights Act and federal enforcement methods provided these newly-empowered voting rights activists with powerful tools to combat systemic vote dilution and suppression. A series of cases in this Court decisively supported that effort and that outcome.[2]

Forty years later, these organizations file this *amici curiae* brief to make it clear that one of the most critical civil rights issues facing American politics today is the virtual exclusion of communities of color and the poor from the political process because of the unlimited, runaway costs of campaigns for elected office.[3] Access, influence and public office are the private reserve of those who can compete in this race for campaign funds. And the interests of those who are able to participate are often very different from those who are members of *Amici* organizations on issues of health care,

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[2] *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969); *Hadnott v. Amos*, 394 U.S. 358 (1969); *Gaston County v. United States*, 395 U.S. 285 (1969); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Terry v. Adams*, 345 U.S. 461 (1953).

[3] Despite the fact that racial minorities make up nearly 1/3 of the United States population, there is currently only one African American Senator and no Latino United States Senators, and only 1/6 of the United States House of Representatives are people of color. For statistics on population by race, *see* OVERVIEW OF RACE AND HISPANIC ORIGIN, *available at* http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf; for statistics on the racial make-up of the Congress, *see* MILDRED L. AMER, CONGRESSIONAL RESEARCH SERVICE, MEMBERSHIP OF THE 108TH CONGRESS: A PROFILE, *available at* http://www.senate.gov/reference/resources/pdf/RS21379.pdf.

wages, taxes, public schools, farm and factory conditions, public benefits, affirmative action, neighborhood safety, the environment and equal justice.

It is the unified position of the organizations who respectfully file this brief that properly tailored campaign expenditure limits are both constitutionally permissible *and necessary* to ensure that all Americans have equal footing in our Nation's process of governance. The Court of Appeals for the Second Circuit correctly held that neither the seminal campaign finance case, *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), nor any subsequent opinion of this Court, impose an absolute bar to limits on campaign expenditures. Rather, after *Buckley*, both factual and legal grounds remain on which expenditure limits may survive constitutional review. As the Second Circuit held in this case, the Vermont Legislature established at least two interests to maintain campaign expenditure limits: deterring corruption and its appearance and protecting the time of candidates and elected officials. *Landell v. Sorrell*, 382 F.3d 91, 124 (2d Cir. 2004).

Buckley was decided in 1976—nearly thirty years ago. The campaign expenditure limits at issue then were struck down because this Court determined that legitimate goals could be accomplished through campaign contribution limits and disclosure only. As experience and the record below show, however, contribution limits alone have not been enough.[4]

In the three decades since *Buckley* was decided, the swiftly escalating levels of campaign fundraising and spending have fueled the erosion of citizen participation and

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[4] The 2004 election has broken all spending records. Candidates for federal office have spent $3.9 billion, a 30% increase over the $3 billion spent on federal elections four years ago. Center for Responsive Politics, *'04 Elections Expected to Cost Nearly $4 Billion* (Oct. 21, 2004 Press Release).

confidence in the electoral process. In Vermont, citizens expressed deep concerns that moneyed interests wielded inordinate influence over the political system and that ordinary voters could not compete. *Id.* at 100, 116. Vermont's elected officials were increasingly being forced to provide "privileged access to contributors *in exchange* for campaign money." *Id.* at 125 (emphasis in original). One former Vermont elected official testified that campaigns had come to reflect an "arms race" in spending that took elected officials away from their official duties to the public. *Id.* at 123. These concerns, along with many others, were precisely what sparked the passage of Vermont's campaign finance law, Act 64, in 1997 by bipartisan majorities in both houses of the Vermont Legislature.

These unparalleled and ever-increasing levels of campaign fundraising and spending also have severely restricted the access of minority and low-income communities to the political process. Minorities, who are overrepresented among the lowest economic levels in America, are largely left out of this critical political arena because making significant campaign contributions requires the type of disposable income that few minorities possess. Despite the gains of the Civil Rights Movement, minorities have lower incomes and less financial wealth than whites, control fewer business interests, and are disproportionately represented among those living in poverty.

For these reasons, furthering realistic opportunities for minority and low-income participation in the political arena should be recognized as an additional basis for reasonable limits on campaign spending. The local, state, and national electorate have a strong and legitimate interest in promoting equal participation, the openness and fairness of government, and the absence of corruption that can be best served by contribution *and expenditure* limits carefully calibrated to respect candidates' rights to freely express their ideas and positions.

ARGUMENT

I. In The Decades After *Buckley v. Valeo*, Dramatically Escalating Pressures To Raise And Spend Exorbitant Amounts To Maintain Viable Candidacies Are Denying Many Americans Fair And Meaningful Participation In The Democratic Process.

The Court of Appeals for the Second Circuit correctly held that neither the seminal 1976 campaign finance case, *Buckley v. Valeo*, nor any subsequent opinion of this Court, rendered campaign expenditure limits *per se* unconstitutional. In *Buckley*, this Court acknowledged that the problems of corruption and the appearance of corruption in electoral politics were severe enough to justify Congress' passage of certain regulations that restricted First Amendment rights. *Buckley*, 424 U.S. at 26–27, 45. This Court struck down the campaign expenditure limits at issue, however, because it determined that campaign contribution limits and disclosure alone were sufficient to limit the improper influence of money in elections. As experience and the record below show, however, things have not turned out that way. Indeed, as the Second Circuit noted, "an unyielding interpretation of *Buckley* that expenditure limits are *per se* unconstitutional . . . would require us to ignore not only *Buckley*'s own language, but also over three decades of experience as to how the campaign funds race has affected public confidence and representative democracy." *Landell*, 382 F.3d at 110.

A. The Unparalleled and Escalating Levels Of Campaign Spending Erode Public Confidence and Imperil the Quality of Democratic Representation.

The powerful evidence considered by the Vermont Legislature and the District Court in support of Act 64's campaign expenditure limits demonstrates that the increasing

importance of money in Vermont's political campaigns leaves average citizens unwilling and unable to participate in the system. At trial, one expert testified that "nearly 75 percent of Vermont voters say that ordinary voters do not have enough influence over Vermont politics and government, and more than two thirds believe that 'large corporations and wealthy individuals have too much influence.'" *Landell*, 382 F.3d at 116 (expert report of Celinda C. Lake). Extensive evidence showed that the endless race for campaign funds hindered "public involvement and confidence in the electoral process" *id.* at 100, and that large donors were able to affect the legislature's agenda. *Id.* at 117. As the Court of Appeals for the Second Circuit recognized, "[w]here access and influence can be bought, citizens are less willing to believe that the political system represents the electorate, exacerbating cynicism and weakening the legitimacy of government power." *Id.* at 119.

The detailed findings below also show that Vermont's system of unchecked expenditures created an "arms race" mentality in which each candidate felt compelled to raise the maximum amount possible because of the constant concern about being outspent. *Id.* at 117. Witnesses testified at trial that special interests wielded great influence on candidates in Vermont: "[P]ublic officials [were] functionally compelled to sell privileged access through the fundraising system." *Id.* at 100. Elected officials testified that they were wary of opposing too many special interests because those interests would stop providing campaign funds. *Id.* at 117.

Vermont also presented potent evidence that the pressure to raise large sums of money required elected officials to spend an inordinate amount of time courting large donors and less time on their official duties. *Id.* at 123. Numerous witnesses testified that, in the absence of spending limits, candidates and elected officials felt compelled to give access to large contributors over private citizens who do not or cannot make campaign contributions. At trial, Vermont

presented striking survey data that showed that 85% of Vermonters were concerned that "political fundraising took away time from important government business." *Id.* at 123. (testimony of Celinda C. Lake).

After 65 hearings involving testimony from 145 witnesses on the pervasive influence of money on the State's political system, the Vermont Legislature determined—by an overwhelming majority and with strong bipartisan support—that limits on *campaign spending*, in addition to limits on contributions, were essential to effect meaningful campaign finance reform.[5] In light of the hugely escalating pressures to raise and spend exorbitant amounts to maintain viable candidacies, this Court should uphold Act 64's campaign expenditure limits as the only realistic means for furthering Vermont's compelling interests in combating corruption and the appearance of corruption, and in protecting the time of candidates and elected officials. Properly tailored campaign expenditure limits are both constitutionally permissible *and necessary* to ensure that all Americans have equal footing in our Nation's process of governance.

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[5] The District Court found that Act 64's spending limits would allow officeholders more time to attend to their duties, protect access to the political arena, and preserve Vermont's citizens' faith in democracy. *Landell v. Sorrell*, 118 F. Supp. 2d 459, 483 (D.Vt. 2000) (citations omitted). Although the District Court ultimately determined that Act 64's expenditure limits were unconstitutional, it noted that, based on the wealth of evidence in support of spending limits, it "underst[ood] why [the Vermont Legislature] included spending limits as part of its comprehensive campaign finance bill." *Id.* at 483. The Second Circuit Court of Appeals held that the Vermont Legislature established at least two interests to maintain campaign expenditure limits: deterring corruption and its appearance and protecting the time of candidates and elected officials. *Landell*, 382 F.3d at 124.

B. The Unparalleled and Escalating Levels Of Campaign Spending Severely Restrict Access of Minority and Low-Income Communities to the Political Process.

A large majority of voters, and especially minority voters, perceive the political process as subject to pervasive and corrupting influence by a few wealthy individuals and corporations. Members of minority groups are severely underrepresented among donors to political campaigns, and are increasingly politically marginalized as the amounts donated increase. In an America where the vast majority of campaign contributors are non-Hispanic white, communities of color perceive an endemic corruptive influence in campaign spending that, as time has proven, can only be entirely eliminated by direct restrictions on expenditures.

As has been well documented, running for office has become an extraordinarily expensive undertaking. In the 2002 and 2004 election cycles, candidates for the U.S. Senate and House of Representatives raised nearly two billion dollars. CENTER FOR RESPONSIVE POLITICS, 2004 ELECTION OVERVIEW: STATS AT A GLANCE, *at* http://www.opensecrets.org.[6] The 2004 presidential race was also the most expensive in history, with both parties' nominees forgoing public funding in the primary and raising nearly $650 million between them. *Id.* In 2002, the average winning candidate for the United States House of Representatives raised nearly $1 million; the average winning candidate for the Senate raised over $5.2 million. *Id.*

Although more attention has been focused on federal

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[6] Portions of these arguments are drawn from Brief of *Amici Curiae* The National Association for the Advancement of Colored People et al., et al. in Support of Petitioners, in *City Of Albuquerque v. Homans*, No. 04-413, prepared by the law firm of Howard Rice Nemerovski Canady Falk & Rabkin.

election spending, there is big money in state government politics as well. A nationwide study on the 2000 state legislative and gubernatorial elections showed that candidates running for a House seat raised an average of $46,123; their Senate counterparts raised over twice that amount, an average of $100,976. EDWIN BENDER & SUE O'CONNELL, THE INSTITUTE ON MONEY IN STATE POLITICS, 2000 STATE ELECTION OVERVIEW 6 (Aug. 2002). The fifty-nine major party gubernatorial candidates spent a combined $115.3 million—an average of nearly $2 million per candidate. *Id.* at 8. *See also* SUE O'CONNELL, THE INSTITUTE ON MONEY IN STATE POLITICS, 2002 STATE ELECTIONS OVERVIEW 2 (Nov. 2004) (candidates for state-level offices raised $2.1 billion in the 2001-02 election cycle).

More significant than the bare numbers, however, is the direct impact that the ability of a candidate to raise money has on his or her chances of winning. In the 2002 Congressional primaries, candidates who raised the most money won in nine out of ten races. ADAM LIOZ, U.S. PIRG EDUCATION FUND, LOOK WHO'S NOT COMING TO WASHINGTON: QUALIFIED CANDIDATES SHUT OUT BY BIG MONEY 7 (Jan. 2003) (hereafter "PIRG Study"). In the general elections, 94% of the biggest fundraisers emerged victorious. *Id.* Incumbents raised vastly more money than their challengers and were extraordinarily successful: 98% of House incumbents were reelected and 85% of Senate incumbents were reelected. CENTER FOR RESPONSIVE POLITICS, THE BIG PICTURE: INCUMBENT ADVANTAGE, *at* http://www.opensecrets.org. The thirteen winning gubernatorial candidates outspent their opponents by an average of $1.2 million (on average winners raised $4.1 million, and losers $2.9 million). *Id.* at 8.

Candidates who lack personal wealth[7] or access to networks of wealthy donors, or whose positions do not appeal to large contributors, are unable to compete. A 2003 survey by the U.S. PIRG of federal candidates in the 2002 election cycle who dropped out of races, lost primaries or lost general elections shows how credible candidates, including many candidates of color who are committed to representing communities in great need of representation, are unable to raise the funds necessary to compete.[8] In 42 out of 50 states, minority legislators who were members of state legislatures in 2003 on average raised less money than their white counterparts. SAMANTHA SANCHEZ, THE INSTITUTE ON MONEY IN STATE POLITICS, MONEY AND DIVERSITY IN STATE LEGISLATURES, 2003 22 (April 2005). Individually, 81.5 percent of all minority state legislators raised less money than the average raised by the white candidates in their state.[9]

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[7] Nearly 43% of the incoming freshman Members of Congress in 2002 were millionaires, compared with 1% of the U.S. voting age population. PIRG Study, *supra*, at 6.

[8] While minorities make up 30.9 percent of the U.S. population, they made up only 11.3 percent of the members of state legislatures in 2003. THE INSTITUTE ON MONEY IN STATE POLITICS, MONEY AND DIVERSITY IN STATE LEGISLATURES, 2003 5, 20 (April 2005). In fact, legislatures in all 50 states failed to reflect the diversity of their state's population. *Id.*

[9] In 36 of the 42 states (where 607 African American legislators were elected), African American legislators raised less on average than did white legislators, including several states with substantial numbers of African American lawmakers. SANCHEZ, MONEY AND DIVERSITY, *supra*, at 7. In 19 of the 27 states (where 140 Latino legislators were elected), Latino legislators raised less on average than white legislators, including several states with substantial Latino representation. *Id.* at 10. Asian Pacific American legislators raised less money than white legislators, on average in seven of the 11 states (where 72 APA legislators were elected). *Id.*

(continued . . .)

Id. See also Jason P. Conti, *The Forgotten Few: Campaign Finance Reform and its Impact on Minority and Female Candidates*, 22 B.C. THIRD WORLD L.J. 99 (2002) (challenger minority candidates have a more difficult time raising money than white candidates).

The imperative to raise thousands of dollars gives the very small segment of the population capable of writing very large checks undue influence in determining who will be elected. In the 2002 election, less than one-quarter of one percent of the voting age population made a contribution of more than $200 to a congressional candidate. ADAM LIOZ, U.S. PIRG EDUCATION FUND, THE ROLE OF MONEY IN THE 2002 CONGRESSIONAL ELECTIONS 15 (July 2003). Less than one-tenth of one percent of the population made a contribution of $1,000 or more. *Id.* Yet this handful of large donors contributed over three-quarters of the individual contributions to congressional candidates. *Id.* at 16–17.

The donors who fund these expensive races are an elite group whose demographics bear little relationship to the country at large. This was the conclusion of a nationwide survey of over 1,000 donors who gave at least $200 to congressional candidates in the 1995–96 election cycle. John Green et al., *Donor Dissent: Congressional Contributors Rethink Giving*, 11 PUBLIC PERSPECTIVE 29 (2000). The study also identified an additional list of "most active donors"—donors who gave money to at least eight candidates and/or gave at least $8,000. *Id.* at 29–30. The researchers concluded that "donors to House and Senate

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(. . . continued)

at 13. In 10 of the 11 states (where 36 Native Americans were elected), Native Americans raised less, on average, than white legislators, even in states with the highest Native American representation. *Id.* at 16.

candidates are disproportionately drawn from advantaged social and economic groups." *Id.* at 30. Nearly 80% of the donors surveyed had annual incomes of over $100,000, and over 80% were college graduates. *Id.* Among the most active donors, over half had incomes of over $500,000, and only four percent had incomes of less than $100,000. *Id. However, the single most common characteristic among donors—regardless of whether they were regular donors or the most active—was race:* 99% of the donors were non-Hispanic white.[10] *Id.*

Minorities are left out of this critical political arena because making significant contributions requires a degree of disposable income that few minorities possess. Despite the gains of the Civil Rights Movement, the racial gap in family income has remained constant over the past twenty years. MICHAEL A. STOLL ET AL., AFRICAN AMERICANS AND THE COLOR LINE (The American People Census 2000 Series 2004). In 2000, the median African American family had an income equal to the national median *in 1965.*[11] *Id.* at 13.

The gap in wealth between non-Hispanic whites and minorities is even more striking. Between 1996 and 2002, the median African American and Hispanic household wealth

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[10] Similarly, a recent study of donors to the 1972, 1988 and 2000 presidential primary campaigns by Clyde Wilcox, Professor of Government at Georgetown University, found that among donors of $200 or more, 86% had incomes over $100,000, and approximately 96% of these donors were non-Hispanic white. Clyde Wilcox, *Individual Donors in the Presidential Nomination Process*, Tables 2 and 3 *in* THE CHANGING DONOR? INDIVIDUAL CONTRIBUTORS IN PRESIDENTIAL ELECTIONS 1972–2000 (Alexandra Cooper et al. eds., forthcoming).

[11] In 2000, the median annual family income was $52,000 while the median African American family income was $31,000. Stoll, *supra*, at 13.

declined by 27%—while the median non-Hispanic white household wealth increased by 2%. RAKESH KOCHAR, PEW HISPANIC CENTER, THE WEALTH OF HISPANIC HOUSEHOLDS: 1996–2000 AS OF 2002 2 (Oct. 2004). The median white household wealth was $88,651—nearly fifteen times that of the median African American household wealth, which was $5,988, and eleven times that of the median Hispanic household wealth, which was $7,932. *Id.* *See also* Spencer Overton, *But Some Are More Equal: Race, Exclusion, and Campaign Finance*, 80 TEX. L. REV. 987 (2002) (because people of color have lower incomes, less wealth, fewer business interests, and higher poverty rates, their ability to contribute or spend political money is severely limited).

Public Campaign, a nonpartisan public interest organization, studied the relationship between campaign money and race. In its study, *The Color of Money: 2003*, Public Campaign organized by donors' ZIP code more than $2 billion in individual contributions of more than $200 to federal candidates, parties and Political Action Committees during the 2000 and 2002 election cycles. PUBLIC CAMPAIGN, THE COLOR OF MONEY: 2003 1 (Major Findings) (2003). Public Campaign then compared these data with data from the 2000 U.S. Census on race, ethnicity and income by ZIP code, using ZIP codes as the bridge between information on campaign contributions (which does not include race or ethnicity of donors) and the census data.

Public Campaign's analysis showed that neighborhoods comprised mostly of people of color are severely underrepresented in the campaign finance system. Nearly 90% of the more than $2 billion contributed by individuals in the two most recent federal elections came from ZIP codes that are majority non-Hispanic white ($1.7 billion—85%—came in the form of contributions of $1,000 or more). In comparison, just 2.8% of campaign funds came from predominantly African American ZIP codes, 1.8% from predominantly Latino ZIP codes, and .6% from

predominantly Asian Pacific American neighborhoods. *Id.* at 2. The top contributing ZIP code nationwide—10021 on Manhattan's Upper East Side—is 86% non-Hispanic white, and nearly 40% of its households have incomes of over $100,000.

Strikingly, this one ZIP code contributes more campaign cash than the 532 ZIP codes nationwide with the largest percentage of African-American residents (representing 7,654,609 people ages 18 and over—84 times more people than live in 10021); the 533 ZIP codes nationwide with the largest percentage of Latino residents (representing 9,355,643 people ages 18 and over—102 times more people than live in 10021) and the 167 ZIP codes nationwide with the largest percentage of Asian Pacific-American population (representing 3,523,852 people ages 18 and over—39 times more people than live in 10021). *Id.* at 2. *See also* PUBLIC CAMPAIGN, THE COLOR OF MONEY: THE 2004 PRESIDENTIAL RACE 3, 16, 18 (2004) (finding that President Bush collected 537 times more cash from top contributing majority non-Hispanic white ZIP codes than from ZIP codes with the highest percentage of people of color nationwide, and Senator Kerry, 452 times as much).

Thus, the evidence demonstrates first, and unsurprisingly, that the most affluent members of American society are vastly overrepresented in political giving and, second, that minorities, who are overrepresented among the lowest economic levels in America, are severely underrepresented among campaign donors. *See* Spencer Overton, *Voices From The Past: Race, Privilege, and Campaign Finance*, 79 N.C. L. REV. 1541 (2001) ("observ[ing] that a history of discrimination has contributed to current racial disparities in property distribution which are, due to the current campaign finance system, replicated in political participation."). Economic inequality and racial disparity, along with the escalating dependence of political leaders on campaign contributions, threaten to imperil the

fundamental principle of equal representation in American politics. Campaign expenditure limits, as contained in Act 64, would foster effective representation and equal access to the political arena for all communities—including those most in need—people of color and the poor.

II. Because The Opportunity For Political Participation For All Citizens Is Fundamental To American Democracy, Furthering Realistic Opportunities For Minority And Low-Income Participation In The Political Process Is An Additional Basis For Reasonable Limits On Campaign Spending.

A campaign finance system without expenditure limits excludes those without the means to compete in fundraising, many of whom are members of racial minority groups. In *Grutter v. Bollinger*, 539 U.S. 306 (2003), this Court recognized that government has an essential interest in promoting equal political participation by acknowledging the effects of racial discrimination in our country: "Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized." *Id.* at 332. This Court stated in *Grutter* that this compelling interest arises in part because universities, and in particular, law schools, are training grounds for many of the nation's leaders: "In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity." *Id.*

But government's interest in promoting a visibly open path to leadership does not end at the gates of universities and law schools. The electoral process is the primary gateway to leadership in our democratic society, and the government has a vital interest in keeping that process open to all members of society. As we work together as a country

to provide equal educational opportunity to minority students (and full participation at all levels in our armed forces), we undermine our accomplishments if we effectively deprive the graduates of these programs of office, of access, and of a sense that government is understanding of and receptive to their views.

The governmental interest in promoting equal political participation has been endorsed in several cases decided by this Court. In *McConnell v. Federal Election Commission*, this Court acknowledged that "[p]reserving the integrity of the electoral process, preventing corruption, and sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of the government are interests of the highest importance." 540 U.S. 93, 206 n.88 (2003) (citation and internal quotation marks omitted). Equal p tical participation interests were also at stake in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), where this Court upheld a prohibition on corporate expenditures designed to combat "corrosive and distorting effects of immense aggregations of wealth." *Id.* at 660. Indeed, the interests of the government in encouraging equal political participation are integrally related to the government interests in preventing corruption and the appearance of corruption set forth in *Buckley*. An unequal election in which only a select number of high bidders can meaningfully participate—an election that appears to be up for sale—will appear corrupt.

This Court's decisions based on the Equal Protection Clause striking down wealth barriers to voting and running for office also address the constitutional issues at stake. In *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 666 (1966), the Court invalidated a poll tax of $1.50 in Virginia state elections, declaring that "Voter qualifications have no relation to wealth. . . ." Moreover, the right of voters, regardless of wealth, to participate meaningfully in the electoral process is not isolated from the ability of

candidates, regardless of wealth, to participate meaningfully as well. *See id.* In *Bullock v. Carter*, 405 U.S. 134, 144 (1972), the Court recognized the "real and appreciable impact on the exercise of the franchise" caused by a system that excludes candidates on the basis of their lack of wealth, and struck down filing fees ranging from $150 to $8,900 that candidates for local office in Texas were required to pay to their political parties. The Court concluded that heightened scrutiny of such candidate filing fees was warranted because the high cost of running in a primary election would limit voter choice:

> Many potential office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support.

Id. at 143. "[W]e would ignore reality," the Court continued, "were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status." *Id.* at 144. *See also Lubin v. Panish*, 415 U.S. 709 (1974) (striking down $700 filing fee for local California election).

America's constitutional Framers recognized that "establishing a political equality among all" was a primary remedy for calling democratic representatives to account.[12] Economic barriers to full participation in the political process fall most heavily on minorities and touches on the most precious of constitutional interests. Congress recognized these interests when it enacted the Voting Rights Act in response to "an upsurge of public indignation against the

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[12] 14 JAMES MADISON, THE PAPERS OF JAMES MADISON 197 (Robert A. Rutland et al. eds., 1983); *see also* THE FEDERALIST NO. 57, at 305, 386 (James Madison) (J. Cooke ed., 1961).

systemic exclusion of Negroes." H.R. REP. NO. 439 (1965), *reprinted in* 1965 U.S.S.C.A.N. 2437, 2440. Prior to the Act's passage, Congress conducted lengthy hearings in which it heard from a wide variety of concerned officials and individuals. In its General Statement in support of the Act, a group of Republican Congressmen commented, "[t]he problem to which this legislation is directed is no abstract matter to those whose rights must be assured. The right to vote is of particular importance and value to minority groups in general but to our Negro citizens in particular who suffer deprivations of rights other than access to the ballot." *Id.* at 2465–66 (General Statement of Republican Views). *See also* Mark C. Alexander, *Money in Political Campaigns and Modern Vote Dilution*, 23 LAW & INEQ. 239, 264-65, 291 (forthcoming 2005) (Courts should weigh whether a campaign finance measure "appropriately serves the goals of increasing equality and reducing the concentration of power in the hands of the few, as articulated in the Voting Cases.").

Even as it enacted major reform, Congress predicted that given the tenacity of racial discrimination, new forms of voter discrimination would replace the existing ones:

> As we destroy the traditional bastions of discrimination erected at registration and polling places, we must foresee the path of retreat and re-entrenchment of those who may continue to preserve the effects of discrimination on account of race or color. Surely it will be in the form of fraud, intimidation and corruption. . . . It is a cruel deception to give any man the elective franchise and then allow destruction of the effect of his vote through a multitude of corrupt practices.

H.R. REP. NO. 439 (1965), *reprinted in* 1965 U.S.S.C.A.N. at 2471.

The corruption predicted in 1965—ballot stuffing and coercion of voters—was, of course, of a different variety than exists today. There are other types of unfair influence that

now beset our political system and shut out those most in need of representation. Without the ability to limit the unceasing race for funds, candidates for office are forced to give access and time to those who can provide money. The Court in *Buckley* stated that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." 424 U.S. at 48-49. As Justice Breyer suggested in a recent discussion of this passage, however, "those words cannot be taken literally." *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 402 (2000). (Breyer, J., joined by Ginsburg, J., concurring). The Constitution, he points out,

> often permits restrictions on the speech of some in order to prevent a few from drowning out the many—in Congress, for example, where constitutionally protected debate, Art. I, § 6, is limited to provide every Member an equal opportunity to express his or her views. Or in elections, where the Constitution tolerates numerous restrictions on ballot access, limiting the political rights of some so as to make effective the political rights of the entire electorate.

Id. (citations omitted).

One valid basis for upholding limits on campaign expenditure limits is that "such restrictions aim to democratize the influence that money itself may bring to bear upon the electoral process. Cf. *Reynolds* v. *Sims*, 377 U.S. 533, 565 (1964) (in the context of apportionment, the Constitution 'demands' that each citizen have 'an equally effective voice')." *Id.* at 401 (citations omitted). This Court's approach should be informed by the fact that "constitutionally protected interests lie on both sides of the legal equation." *Id.* at 400.

Today what must be wholly foreign is a political system in which free speech is measured only in dollars and

major segments of society are left disaffected and ultimately as powerless to influence choice of candidates and public policy as they were decades ago. If this is the teaching of *Buckley*, *Amici* urge that it be revisited and modified or overturned. Legislators and citizens can and should be permitted to balance competing and compelling government interests in equal participation, absence of corruption, and broad buy-in to government with carefully drawn limits that still protect, and indeed encourage and permit, broad communication of ideas and positions. That is the system Vermont implemented in 1997 and *Amici* ask that it be sustained.

CONCLUSION

For the foregoing reasons, *Amici* urge this Court to grant the petitions for writ of certiorari with respect to the first question presented in each petition and uphold Act 64's campaign expenditure limitations. *Amici* further urge this Court to deny review of the remaining questions presented in the petitions, as none of them presents an issue warranting this Court's consideration.

Respectfully submitted,

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